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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,536	06/29/2001	James S. Magdych	NAI1P008/01.113.01	6511
28875	7590	11/18/2004	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			AILES, BENJAMIN A	
			ART UNIT	PAPER NUMBER
			2142	
DATE MAILED: 11/18/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/895,536

Applicant(s)

MAGDYCH ET AL.

Examiner

Benjamin A Ailes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-30 have been examined.

Priority

2. No claim for priority has been made in this application.
3. The effective filing date for the subject matter defined in the pending claims in this application is 06/29/2001.

Drawings

4. The Examiner contends that the drawings submitted on 06/29/2001 are acceptable for examination proceedings.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 14-27 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The computer program as claimed is considered non-statutory subject matter since it does not fall into any of the following statutory categories: new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.

7. Claim 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The logic as claimed is considered non-statutory subject matter since it does not fall into any of the following statutory categories: new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 11, and 13, 14, 24, 26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. (U.S. Patent Number 6,526,433), hereinafter referred to as Chang et al, in view of Kingsford et al (U.S. Patent Number 6,574,737), hereinafter referred to as Kingsford et al.

10. Regarding claims 1, 14, and 28 Chang et al. disclose a variable timeout duration which is set based on network conditions, comprising:

- Measuring network conditions in a network coupled between a source and a target (Abstract and col. 2, lines 28-33);
- Chang et al. disclose the connection between a target and a source (col. 2, lines 28-38), but are silent on the use of executing a risk assessment scan between a target and a source. However, Kingsford et al. disclose the execution of a risk assessment scan between a source and a target (col. 2, lines 35-43). One of ordinary skill in the art at the time of the applicant's invention would have found it obvious to use the risk-assessment scan disclosed by Kingsford et al. in combination with the variable time out duration method disclosed by Chang et al. because in a risk-assessment scan timeout conditions are bound to happen (Chang et al, col. 7, lines 23-39). It is for this reason that one of ordinary skill in

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the art would have been motivated to combine the risk assessment scan disclosed by Kingsford et al. with the variable time out duration method disclosed by Chang et al.

11. Regarding claims 11 and 24, Chang et al. disclose the use of a timeout for each connection (see Abstract), but are silent on the use of executing a risk assessment scan between a target and a source. However, Kingsford et al. disclose the execution of a risk assessment scan between a source and a target (col. 2, lines 35-43). One of ordinary skill in the art at the time of the applicant's invention would have found it to their advantage to use the variable time out duration method disclosed by Chang et al. in combination with the risk-assessment scan method disclosed by Kingsford et al. The same motivation that was utilized in the combination of claim 1 applies equally as well to claim 11.

12. Regarding claims 13 and 26, Chang et al. disclose the use of a timeout for each connection (see Abstract), but are silent on the use of the risk assessment scan. However, Kingsford et al. disclose the execution of a risk assessment scan between a source and a target (col. 2, lines 35-43). One of ordinary skill in the art at the time of the applicant's invention would have found it to their advantage to use the variable time out duration method disclosed by Chang et al. in combination with the risk-assessment scan method disclosed by Kingsford et al. in order to make it possible to abandon a scan if a target fails to respond to the scan based on the timeout duration variable. The same motivation that was utilized in the combination of claim 1 applies equally as well to claim 13.

13. Regarding claims 29 and 30, Chang et al. disclose a variable timeout duration which is set based on network conditions, comprising:

- method wherein the probe signal prompts the target to send a response signal to the source utilizing the network (col. 6, lines 26-34).
- method wherein measuring the network conditions further includes receiving the response signal from the target utilizing the network (col. 6, lines 26-34).
- method wherein measuring the network conditions further includes measuring a response duration between the transmission of the probe signal and the receipt of the response signal (col. 6, lines 26-34).
- Chang et al. disclose the connection between a target and a source (col. 2, lines 28-38), but are silent on the use of executing a risk assessment scan between a target and a source. However, Kingsford et al. disclose the execution of a risk assessment scan between a source and a target (col. 2, lines 35-43). One of ordinary skill in the art at the time of the applicant's invention would have found it obvious to use the risk-assessment scan disclosed by Kingsford et al. in combination with the variable time out duration method disclosed by Chang et al. because in a risk-assessment scan timeout conditions are bound to happen (Chang et al, col. 7, lines 23-39). The same motivation that was utilized in the combination of claim 1 applies equally as well to claims 29 and 30.
- Chang et al. disclose the use of a timeout for each connection (see Abstract), but are silent on the use of the risk assessment scan. However, Kingsford et al. disclose the execution of a risk assessment scan between a source and a target

(col. 2, lines 35-43). One of ordinary skill in the art at the time of the applicant's invention would have found it to their advantage to use the variable time out duration method disclosed by Chang et al. in combination with the risk-assessment scan method disclosed by Kingsford et al. in order to make it possible to abandon a scan if a target fails to respond to the scan based on the timeout duration variable. The same motivation that was utilized in the combination of claim 1 applies equally as well to claim 13.

14. Claims 10 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kingsford et al.

15. Regarding claims 10 and 23, in accordance with claims 1 and 14, Kingsford et al. disclose the method wherein executing the risk-assessment scan includes executing a plurality of risk-assessment scan modules (see Abstract).

16. Claims 2-9,12,15-22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al.

17. Regarding claims 2 and 15, in accordance with claims 1 and 14, respectively, Chang et al. disclose the method wherein the network conditions include latency associated with communication between the source and the target (col. 6, lines 26-34).

18. Regarding claims 3 and 16, in accordance with claims 1 and 14, respectively, Chang et al. disclose the method wherein measuring the network conditions includes transmitting a probe signal from the source to the target utilizing the network (col. 6, lines 26-34).

19. Regarding claims 4 and 17, in accordance with claims 3 and 16, respectively, Chang et al. disclose the method wherein the probe signal prompts the target to send a response signal to the source utilizing the network (col. 6, lines 26-34).

20. Regarding claim 5 and 18, in accordance with claims 4 and 17, respectively, Chang et al. disclose the method wherein measuring the network conditions further includes receiving the response signal from the target utilizing the network (col. 6, lines 26-34).

21. Regarding claims 6 and 19, in accordance with claims 5 and 18, respectively, Chang et al. disclose the method wherein measuring the network conditions further includes measuring response duration between the transmission of the probe signal and the receipt of the response signal (col. 6, lines 26-34).

22. Regarding claims 7 and 20, in accordance with claims 6 and 19, respectively, Chang et al. disclose the method wherein the timeout is set as a function of the response duration (col. 6, lines 35-51).

23. Regarding claims 8 and 21, in accordance with claims 1 and 14, respectively, Chang et al. disclose the method wherein the timeout is set by adding a default value with a variable value which is set as a function of the measured network conditions (col. 6, line 49 – col. 7, line 5).

24. Regarding claims 9 and 22, in accordance with claims 1 and 14, respectively, Chang et al. disclose the method wherein the timeout is set by multiplying a default value with a variable value which is set as a function of the measured network conditions (col. 6, line 49 – col. 7, line 5).

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25. Regarding claims 12 and 25, in accordance with claims 1 and 14, Chang et al. disclose the method further comprising storing a result of the measurement of the network conditions (col. 6, lines 31-34).

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A. Ailes, whose telephone number is (571)272-3899. The examiner can normally be reached on Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached at (571)272-3896. The fax phone number for the organization where this application or proceeding is assigned is (703)872-3906.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [benjamin.ailes@uspto.gov].

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All Internet e-mail communications will be made of record in the application file.

PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Benjamin Ailes
Patent Examiner
Art Unit 2142



JACK B. HARVEY
SUPERVISORY PATENT EXAMINER